

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LADENE DILLIHUNT and U.S. POSTAL SERVICE,  
POST OFFICE, Berkeley, Calif.

*Docket No. 96-1852; Submitted on the Record;  
Issued June 1, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty.

On March 9, 1994 appellant filed a claim for sexual harassment. In a chronology of events prepared by her treating psychologist and in her testimony before an Office of Workers' Compensation Programs' hearing representative on January 23, 1995, appellant alleged that this sexual harassment was committed by her former supervisor at the employing establishment during the period from June to December 1993.

By decision dated May 31, 1995, an Office hearing representative found that the evidence did not establish that the events implicated by appellant occurred, and stated: "I did not find the claimant's hearing testimony credible. Apart from the complete lack of any evidence to support her allegations, the claimant's description of the events that supposedly occurred are not realistic and appear to be fanciful inventions."

On May 30, 1996 appellant, through his representative, requested both reconsideration before the Office and an appeal before the Board. By decision dated June 25, 1996, the Office found that the evidence submitted in support of appellant's request for reconsideration was repetitious or cumulative or immaterial, and not sufficient to warrant review of its prior decision. The Board finds that the Office's June 25, 1996 decision is null and void, as it was issued while the Board had jurisdiction over appellant's case for the present appeal on the same issue.<sup>1</sup>

The Board further finds that appellant has not established that she sustained an emotional condition in the performance of duty.

The Board has held that actions of an employee's supervisor which the employee characterizes as harassment or discrimination may constitute factors of employment giving rise

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<sup>1</sup> See *Douglas E. Billings*, 41 ECAB 880 (1990).

to coverage under the Federal Employees' Compensation Act. However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions alone of harassment or discrimination are not compensable under the Act.<sup>2</sup> A claimant must substantiate his or her allegations of harassment or discrimination with probative and reliable evidence.<sup>3</sup>

In the present case, appellant has not submitted any evidence to substantiate her allegations of sexual harassment by her supervisor. Despite her testimony at the January 23, 1995 hearing that the harassment occurred on a daily basis and that other persons "had to" have seen the physical contact initiated by the supervisor when appellant was working at the window, appellant did not submit a statement from any coworker or customer substantiating that any incident of sexual harassment did in fact occur. In addition, an Office hearing representative, who had the opportunity to personally observe appellant's demeanor and assess her credibility, found that appellant's testimony was not credible. This is consistent with the finding of an administrative law judge in a November 4, 1994 decision in appellant's supervisor's appeal of his removal for unsatisfactory conduct toward appellant -- the same conduct which appellant alleged in her claim for compensation under the Act. In the November 4, 1994 decision, the administrative law judge found appellant's testimony "inconsistent, contradictory, implausible, patently fabricated, and, on the whole, unworthy of belief."<sup>4</sup> Appellant has not established that the alleged harassment in fact occurred.

The decision of the Office of Workers' Compensation Programs dated May 31, 1995 is affirmed. The decision of the Office dated June 25, 1996 is set aside as null and void.

Dated, Washington, D.C.  
June 1, 1998

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>4</sup> The Board has stated that determinations of other administrative bodies or of courts, while not determinative, are instructive. *Paul Trotman-Hall*, 45 ECAB 229 (1993).